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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

File: [REDACTED] Office: Vermont Service Center

Date: JUN 13 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), in order to employ her as a deacon.

The director denied the petition finding that the petitioner had not demonstrated that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition.

On appeal, counsel argues that the record clearly supports a finding that the beneficiary has been continuously employed in a religious occupation for at least two years prior to the filing of the petition. Additional information has been provided by counsel in support of the appeal.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(c) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of the application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States.

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation;

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

An alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious organization in the United States. The alien must be coming to the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination, working for the organization at the organization's request in a professional capacity in a religious vocation or occupation for the organization or a bona fide organization which is affiliated with the organization described in section 501(c)(3) of the Internal Revenue Code of 1986 at the request of the organization. All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on April 9, 2001. Therefore, the petitioner must establish that the beneficiary was continuously and solely carrying on a qualifying religious vocation or occupation since at least April 9, 1999.

In part 4 of the petition, Form I-360, it is stated that:

The beneficiary has been employed in the United States without permission since her entry in 1992. She was employed in various jobs from 1992 until her official ordination as a Deacon for the Shalom Church in November, 1995. Since that time, she has been continuously engaged in her Minister of Religion occupation with the Petitioner to date.

In a letter dated March 29, 2001, the petitioner's executive minister states, in pertinent part, that:

As the executive minister for The American Baptist Churches of Massachusetts ("TABCOM"), I am writing this letter in support of our petition to seek special immigrant visa status for [REDACTED] to continue to serve as a full-time Deacon to our member congregation, the Belmont Street Shalom International Baptist Church ("Shalom Church") located in Watertown, Massachusetts.

Deacon Coelho was officially ordained by the Shalom Church to perform ministerial duties in November. She has full authority to perform pastoral counseling, preside at such events as weddings and baptisms and can administer the sacraments of the Lord's Supper at worship services. In addition, [REDACTED] is authorized by the Shalom Church to conduct bible [sic] studies, pastoral visitations and be involved in any of the ministry work of the Shalom Church, which at present includes such ministries as a women's ministry, a youth ministry and a special needs ministry. This religious work has been continuous, without interruption, to the present time.

In a letter dated March 28, 2001, the vice president of the Belmont Street Shalom International Baptist Church, [REDACTED] states that the beneficiary has worked as a secretary for the church's pastor, taught the "youth of the church," "accepted the position of assistant treasurer," and was trained to qualify as a candidate for the position of deacon of the church. The letter indicates that the beneficiary was examined by the board of examiners of the Shalom Church and was found to "be qualified" and was ordained as a deacon of the Shalom Church. The letter further indicates that the beneficiary's job offer with the church is for a permanent full-time position at a salary of \$350.00 per week.

In another letter, dated December 17, 2001, [REDACTED] states that the beneficiary has been fully and continuously engaged in her "religious profession" as deacon to the Shalom Church. [REDACTED] also states that his church "has been compensating [REDACTED] for this continuous engagement for at least the past two years since we filed this Petition on her behalf." [REDACTED] did indicate that the church has no records such as pay stubs or check receipts to support its claimed compensation of \$250.00 per week, as the beneficiary was not in possession of a social security card and had to be paid in cash. Further, [REDACTED] states that, as deacon, the beneficiary is "called upon at all hours of the day or night to tend to the religious needs of our congregation." [REDACTED] contends that the beneficiary, in her capacity as deacon, commits herself to more than 40 hours per week, which he asserts is "clearly a full-time occupation."

On appeal, counsel argues that the record attests to the detailed and significant ministerial religious functions that the beneficiary, as an ordained deacon, routinely performs in her congregation since her ordination in November 1995. Counsel also argues that the support letters contained in the record attest to the beneficiary's presiding at religious ceremonies such as weddings and baptisms, administering the holy sacraments at worship services, conducting Bible studies, providing pastoral counseling, and visiting members of the congregation.

Counsel further argues that the beneficiary clearly performs functions of a ministerial nature whose duties require the skills and knowledge of a person who has clearly undergone specific religious training and study to be qualified for such functions within the petitioner's congregation.

In addition, counsel contends that photos contained in the record, which counsel claims shows the beneficiary presiding at religious worship services, counseling, and leading Bible classes, and the church bulletins illustrating the engagement of the beneficiary in her "official religious leadership role at the ABC Church dating back to 1996," corroborates the statements submitted by church officials that the beneficiary "has been regularly and formally engaged in her religious occupation with the ABC Church since her ordination."

The regulation defining a qualifying religious occupation is worded in a broad manner. This is to accommodate the broad range of religious occupations in various religious traditions. While the position of "deacon" is a tradition in many denominations, the Bureau must look beyond the title of a position. The Bureau must look at the duties of the position, the sufficiency of evidence submitted, and the credibility of the claim.

Furthermore, in evaluating a claim of prior work experience, the Bureau must distinguish between common participation in the religious life of a denomination and engaging continuously in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. It is not reasonable to assume that the petitioning religious organization, or any employer, could place the same responsibilities, the same control of time, and the same delegation of duties on an unpaid volunteer as it could on a salaried employee. Nor is there any means for the Bureau to verify a claim of past volunteer work, similar to verifying a claim of past employment. For all these reasons, the Bureau holds that lay persons who perform volunteer activities, especially while also engaged in a secular occupation, are not engaged in a religious occupation and that the voluntary activities do not constitute qualifying religious work experience for the purpose of an employment-based special immigrant visa petition.

In this case, the evidence presented is not persuasive in demonstrating that the beneficiary had had two years of continuous experience in a religious occupation.

First, the photos contained in the record merely show the beneficiary standing with a group of youths and adults, and

standing in what appears to be the front of the inside of a church holding a microphone. The Bureau cannot assume from these photos that the beneficiary is engaged in religious work simply because it appears that she is standing inside of a church. As it cannot be ascertained from the photos exactly what the beneficiary is doing, it cannot be concluded that the beneficiary is performing any type of religious function.

Second, the above mentioned "church bulletins," which are dated December 14, 1996, May 18, 1997, April 4, 2000, March 4, 2001, November 18, 2001, September 9, 2001, and December 2001, list the beneficiary as a voluntary assistant to the pastor. The fact that the church bulletins list the beneficiary's services with the petitioning church as voluntary, impugns the aforementioned statements that the beneficiary was continuously engaged in a religious occupation since at least April 9, 1999. Further, the above dates do not give credence to the statement that the beneficiary was employed in a permanent full-time position with the petitioning church. The record contains no evidence of any type of work schedule for the beneficiary that would sufficiently establish that her claimed duties were full-time or, according to Reverend [REDACTED] "more than 40 hours per week."

Third, the petitioner's claim that the beneficiary received weekly cash payments of \$250.00 has not been substantiated. To support the claimed payments, Reverend Jones states, in pertinent part, that:

We offer a copy of the official minutes of our church meeting, held on February 2, 1999, in which the official vote by our Church Board was made to approve compensation in the amount of \$250.00 per week for [REDACTED] to serve in her official Deacon capacity with our church. This vote occurred prior to April, [sic] 1999 and evidences our church's formal decision to compensate Deacon Coelho for her religious work more than two years preceding the date of our filing of the instant Petition in April, 2001.

The record contains no copy of the church's "official minutes" as claimed by [REDACTED]. Further, as it was stated that the beneficiary was paid in cash, no objective documentation such as payroll or tax records were available to corroborate the claim that the beneficiary was employed by the petitioning organization and was paid at the rate of the equivalent of \$12,000 per year. Simply making assertions without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Fourth, although the beneficiary was ordained as a deacon by the

petitioning church, it has not been shown that the job of a deacon requires religious training which the beneficiary has satisfied. Further, the record contains no documentary evidence to demonstrate that the beneficiary has taken any vows.

Based on the evidence presented by the petitioner, it cannot be concluded that the beneficiary was continuously engaged in a religious occupation during the two-year qualifying period. For this reason, the petition may not be approved.

It must be noted that this office acknowledges that determining the status or the duties of an individual within a religious organization is not a matter under the Bureau's purview; however, determining whether that individual qualifies for status or benefits under our immigration laws is another. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.